

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
PROCEEDINGS BEFORE THE DUE PROCESS HEARING OFFICER

BARBARA BERGER,
on behalf of S [REDACTED] B [REDACTED]
Petitioner,

vs.

DPH 1314-18

ESPAÑOLA PUBLIC SCHOOLS
Respondent.

RESOLUTION AGREEMENT

THIS RESOLUTION AGREEMENT is made and entered into pursuant to 34 C.F.R. § 300.510 by and among S [REDACTED] B [REDACTED] by her mother, Barbara Berger, individually and on behalf of S [REDACTED] B [REDACTED] (collectively referred to as "PETITIONER"), and the Española Public Schools (collectively referred to as "RESPONDENT" or "EPS" or "District") in resolution of all claims between the parties under the Individuals with Disabilities Education Act through the Effective Date of this Agreement.

PETITIONER and RESPONDENT, desiring to resolve all claims under the Individuals with Disabilities Education Act (IDEA) through the Execution Date of this Agreement, agree to the following:

1. RESPONDENT agrees to contract with Diagnostics Assessments, Inc. for Julianne Unger Hancock, MA to conduct an Independent Educational Evaluation (IEE) of Sucely including Parent intake and diagnostic testing, test materials, completion of diagnosis and psycho-educational report, test interpretation with parents and school staff, report provided to parent and school contact for a maximum cost of one thousand two hundred dollars (\$1,200.00) plus New Mexico Gross Receipts Tax.
2. PETITIONER agrees to contact Diagnostics Assessments, Inc. directly to make all necessary appointments for completion of the IEE and provide all necessary transportation.
3. PETITIONER agrees to sign consent to the release and exchange of confidential information between the District and Julianne Unger Hancock, MA, Diagnostics Assessments, Inc. for purposes of the IEE as well as any follow-up planning.

4. RESPONDENT agrees to have High School Counselor Evelyn Martinez conduct a vocational evaluation of S [REDACTED]. PETITIONER agrees to consent, and hereby does consent to the vocational evaluation.
5. PETITIONER and RESPONDENT agree that S [REDACTED] will withdraw from IMP IV at the High School and instead take a math class through IDEAL NM or Northern New Mexico College that satisfies graduation requirements. PETITIONER agrees to notify RESPONDENT no later than noon on Tuesday, January 21, 2014, and communicate with RESPONDENT as necessary, regarding her selection so that RESPONDENT can enroll S [REDACTED] in the selected class. PETITIONER will notify RESPONDENT by contacting High School Counselor Evelyn Martinez via cell phone. RESPONDENT agrees that the class shall be provided at no cost to PETITIONER. PETITIONER agrees to be responsible for any necessary transportation. If PETITIONER selects an IDEAL NM (on-line) math class and does not have the necessary computer equipment, RESPONDENT agrees to make available to PETITIONER the necessary computer equipment so that she can fulfill the course requirements from home. PETITIONER agrees that S [REDACTED] will regularly attend and timely fulfill course requirements, and further promptly notify RESPONDENT through the Director of Special Education if any concerns arise regarding the class.
6. RESPONDENT agrees to contract with John Nelson in the amount of \$25.00 per hour to provide up to four (4) hours per week of compensatory tutoring in the area of math until S [REDACTED] completes the math class referenced in Paragraph 5 above or through the end of the 2013-2014 school year, whichever comes first. PETITIONER agrees to contact John Nelson directly to make all necessary tutoring appointments. PETITIONER agrees to provide all necessary transportation for the tutoring. If PETITIONER decides to discontinue the compensatory tutoring, or reduce the level of compensatory tutoring, PETITIONER agrees to promptly notify in writing the District's Director of Special Education.
7. RESPONDENT agrees to arrange for S [REDACTED] to receive high school credit for her participation in the tutoring referenced in Paragraph 6 above, by assigning it an appropriate course name and ensuring her enrollment in the course.
8. RESPONDENT agrees to pay the cost (tuition and fees) for S [REDACTED] to enroll in and take one remedial math class (Mathematics 100N, 102N, 103N or 104N) at Northern New Mexico College during the Summer 2014. PETITIONER agrees to be responsible for enrolling S [REDACTED] in the class and coordinating with the Director of Special Education regarding payment of the necessary tuition and fees. Should S [REDACTED] enroll in a remedial math class pursuant to this Paragraph, PETITIONER agrees that S [REDACTED] will regularly attend and complete the remedial class.
9. RESPONDENT agrees to have High School Counselor Evelyn Martinez, the Director of Special Education, or other appropriate EPS employee introduce

Sucely to the Student Support Center at Northern New Mexico College before Sucely takes the remedial math class referenced in Paragraph 8 above.

10. RESPONDENT agrees to pay the cost for S [REDACTED] to take the ACT Online Prep program offered by ACT. PETITIONER agrees to be responsible for communicating and coordinating with the Director of Special Education regarding enrollment and payment of the necessary fee for the program. Should PETITIONER enroll in the ACT Online Prep program pursuant to this Paragraph, PETITIONER agrees that S [REDACTED] will participate in the ACT Online Prep program.
11. PETITIONER agrees not to hold RESPONDENT responsible should John Nelson or Evelyn Martinez become unable to fulfill the roles specified in this Agreement. RESPONDENT agrees to promptly identify an alternative qualified provider should circumstances warrant.
12. PETITIONER agrees to release, and does hereby release, RESPONDENT Espafiola Public Schools, including its officials, employees, officers and agents, from any and all claims under the Individuals with Disabilities Education Act (IDEA) including but not limited to any claims for independent evaluations, reimbursement, compensatory services and attorneys' fees, arising from any acts or omissions of RESPONDENT through the Effective Date of this Agreement.
13. This Resolution Agreement shall not be construed as an admission of liability or of any wrongful act or omission by any party, such liability and wrongdoing being expressly denied by RESPONDENT. Rather, PETITIONER and RESPONDENT mutually acknowledge and represent that this is a compromise in resolution of disputed IDEA claims.
14. Within 30 calendar days of the Effective Date of this Agreement, RESPONDENT agrees to pay the lump sum amount of six thousand one hundred and sixty one dollars and 86/100 (\$6,161.86) for the full release of all PETITIONER's IDEA claims including any claims for attorneys' fees and costs, the sufficiency of which is hereby acknowledged. Said payment shall be made by instrument made payable to Debra Poulin, Attorney at Law.
15. PETITIONER agrees to dismiss with prejudice the proceeding now pending before an independent due process hearing officer for the State of New Mexico, Docket No. 1314-18, within 24 hours from the Effective Date of this Agreement.
16. RESPONDENT and PETITIONER agree to waive the three business day opportunity to void this Agreement, and further agree that this Agreement becomes effective as of the Execution Date indicated below.

17. PETITIONER and RESPONDENT agree that this Agreement is binding and enforceable in any State court of competent jurisdiction or in a district court of the United States pursuant to 34 C.F.R. § 300.510(d)(2).

IN WITNESS WHEREOF, the parties have executed this Agreement, to be effective on the Execution Date below.

Date Signed: 1 - 22 - 14
("Execution Date" and "Effective Date")

Signatures:

Barbara Berger
Barbara Berger, Individually and on behalf
of S [REDACTED] B [REDACTED]

Christina C. Baca
Representative of Espaniola Public Schools
("EPS") with Decision-Making Authority
on behalf of EPS

APPROVED AS TO FORM AND CONTENT:

Doris Ponin
ATTORNEY FOR PETITIONER

Elena Sallegas, with permission
ATTORNEY FOR RESPONDENT Lyle Ponin